APPENDIX A

UNITED STATES COURT OF APPEALS

TENTH DISTRICT

JUNE TERM, 1961

No. 6483

AMERADA PETROLEUM CORPORATION,
Petitioner,
v.
FEDERAL POWER COMMISSION,
Respondent.

No. 6498

AMERADA PETROLEUM CORPORATION,
Petitioner,
v.
FEDERAL POWER COMMISSION,
Respondent.

ON PETITIONS TO REVIEW ORDERS OF THE FEDERAL POWER COMMISSION

(Decided July 24, 1961)

N. Kenneth Scott, Jr., (Robert J. Stanton, Joseph W. Morris, and John S. Miller were with him on the brief) for Petitioner.

John D. Lane (John C. Mason, General Counsel; Howard E. Wahrenbrock, Solicitor; and Luke R. Lamb, Assistant General Counsel, were with him on the brief) for Respondent.

Before BRATTON, LEWIS and BREITENSTEIN, Circuit Judges.

BRATTON, Circuit Judge:

Section 4(c) of the Natural Gas Act of 1938, 52 Stat. 821, as amended, 15 U.S.C. §717 et seq., requires natural gas companies subject to regulation to file with the Federal Power Commission schedules of rates and all contracts which in any manner affect or relate to rates. Section 4(d) provides that unless the Commission orders otherwise, no change in rates shall be made except after thirty days' notice to the Commission, the notice stating the change or changes to be made in the schedule or schedules then in force and the time when such change or changes will go into effect. Except in cases of industrial rates, section 4(e) empowers the Commission to suspend new schedules for a period of not more than five months beyond the time they otherwise would go into effect pending a determination of their reasonableness. The section further provides that if the Commission has not reached a decision before the period of suspension has expired, the filed rate shall on motion of the natural gas company go into effect. Section 5(a) vests in the Commission power, after a hearing, to modify rates which it determines are unjust, unreasonable, unduly discriminatory, or preferential. Section 16 grants to the Commission power to perform any and all acts and make such rules and regulations as it may find necessary or appropriate to carry out the provisions of the Act. And section 19(b) makes provision for judicial review of orders issued by the Commission.

Amerada Petroleum Corporation, a producer of natural gas, is subject to regulation under the Act. It sold gas to El Paso Natural Gas under nine sales contracts which it filed with the Commission as rate schedules. The contracts each contained a favored nation provision. By virtue of such provisions, El Paso Natural became obligated to increase its payments for gas under six of such contracts, effective October 1, 1959; and by virtue of like provisions, El Paso became obligated to increase its payments under the other three contracts,

effective October 9, 1959. On August 31, 1959, Amerada filed with the Commission notices of change in rates under the six contracts; and on September 8, it filed like notices of change under the three contracts. By orders issued September 25 and October 7, 1959, the Commission suspended these rate changes, respectively, until March 1 and March 9, 1960, respectively. On October 26, 1959, Amerada and El Paso Natural renegotiated the nine contracts. The renegotiated contracts fixed the sales price of gas at a figure in excess of that specified in the original contracts and the increase under the favored nations provisions combined. On November 30, the renegotiated contracts were filed with the Commission as supplements to the original rate schedules and as notices of change in rates. By order issued December 18, 1959, the Commission accepted the filings and suspended the rate increases until June 1, 1960. On February 5, 1960, the Commission advised Amerada by letters that the filings of August 31 and September 8, 1959, were regarded by the Commission as superseded by those of November 30, 1959, and, therefore, the former proceedings were terminated as moot. Amerada filed motions to place in effect on March 1 and March 9, 1960, respectively, the increases of which notice had been given in August and September. On March 7, it filed petitions for rehearing and reconsideration of the letter orders of February 5, 1960. On April 5, 1960, the Commission issued its order granting the petitions for rehearing, vacating the letter orders, reinstating the August and September, 1959, filings, and rescinding permission to file the rate changes tendered on November 30, 1959. On April 25, 1960, Amerada refiled the supplemental rate schedules which the Commission rejected by its order of April 5, 1960. By order dated May 25, the Commission suspended until November 1, 1960, use of the increase in rates embodied in the refiled supplemental schedules. And by petitions under section 19(b) of the Act, Amerada brought here for review the orders of the Commission of February 5 [*sic*] and May 25, 1960.

Except as restricted by express or implied provisions in the Act, natural gas companies possess the same freedom

in respect to the making of rates that they would have in the absence of the Act. The Act does not purport to grant to or take from natural gas companies their power to make rates initially, by contract or otherwise, subject to rejection or modification upon a finding of the Commission that they are unlawful. Considered as a whole, the Act establishes a comprehensive statutory scheme under which rates are established initially by action of natural gas companies with the Commission exercising powers of review. United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U. S. 332. And natural gas companies are free to effectuate changes in rates from time to time, but they are subject to procedures and limitations of the Act. United Gas Pipe Line Co. v. Memphis Light, Gas and Water Division, 358 U.S. 103.

The order of April 5, 1960, is attacked on the ground that the Commission did not have authority to reject the notices of change in rates because the changes were to be made during the period when prior rate changes relating to the same gas were suspended. Pinpointing, the substance of the challenge is that the Act contains no restriction upon making rate changes during periods when prior rate changes relating to the same gas are suspended. The order stated that the Commission's general policy and interpretation of the Act had been that a rate in effect prior to the suspension continues in effect during the suspension period and shall not be changed during such period. It was further stated that the November 30, 1959, filings proposed to change rates under suspension and, therefore, were subject to rejection. It was further stated that since such action was considered less onerous to Amerada, the Commission considered the changes as superseding the prior filings. And it was further stated that, in view of Amerada's opposition to such action, and consistent with the Commission's general policy and interpretation of the Act, it was deemed necessary and proper for the enforcement of the Act to rescind the Commission's prior permission to file the November 30, 1959, changes and reject them without prejudice to their resubmittal; to vacate the letter orders dated February

5, 1960; to reinstate the suspension proceedings, and to reinstate the supplements tendered for filings on August 31, 1959, and September 8, 1959. Section 4(d) of the Act concerns itself with the making of changes in rates. It forbids the making of changes without notice thereof being given to the Commission for at least thirty days before such changed rates are to go into effect. And it provides that the notice shall state the change or changes to be made in the schedule or schedules "then in force" and the time at which the changed rates shall go into effect. Considered as a whole, the section bears a clear token of Congressional implication that the power of a natural gas company to make a change or changes in rates is limited to the rate or rates in force and effect at the time of the change or changes. Moreover, by section 16 of the Act, the Commission is expressly vested with power "to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders as it may find necessary or appropriate to carry out the provisions of this Act." Manifestly, that is a sweeping grant of administrative authority to be exercised in the sound discretion of the Commission. In the exercise of such power, the Commission has consistently declared its policy and interpretation of the Act to be that during the suspension of a rate, the prior existing rate schedule continues in effect and shall not be changed. 18 CFR §§2.4(f) and 2.52, page 37. Congress has not taken steps directly or indirectly disapproving such policy and interpretation. And that administrative interpretation is to be accorded appropriate consideration in arriving at a judicial construction of the Act. Sunray Mid-Continent Oil Co. v. Federal Power Commission, 364 U. S. 137, 154. Considering the statute and the regulations together, we entertain no doubt that the Commission was clothed with authority to enter the order of April 5, 1960.

The order of May 25, 1960, is challenged on the ground that its effect was to suspend Amerada's rate changes for a period in excess of the statutory limit of five months from the time they otherwise would have gone into effect with a

resulting loss in revenue to Amerada during such excess. The contention is based upon the premise that it was of no moment that the first increases were suspended at the time the second increases were to become effective. That which has been said makes obvious that the premise is without sustainable foundation. The effective date of changed rates after suspension has reference to a valid filing. The period has no reference to the filing of an invalid change.

The orders of the Commission are severally

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,775

WILLMUT GAS & OIL COMPANY,
Petitioner
v.
FEDERAL POWER COMMISSION,
Respondent
UNITED GAS PIPE LINE COMPANY,
Intervenor

Petition for Review of Order of the
Federal Power Commission

Decided July 20, 1961

Mr. Bryce Rea, Jr., with whom *Mr. Thomas M. Knebel* was on the brief, for petitioner.

Mr. Milton J. Grossman, Attorney, Federal Power Commission, with whom *Messrs. John C. Mason*, General Counsel, Federal Power Commission, and *Howard E. Wahrenbrock*, Solicitor, Federal Power Commission, were on the brief, for respondent.

Mr. Thomas Fletcher, with whom *Mr. C. Huffman Lewis* was on the brief, for intervenor.

Before WILBUR K. MILLER, *Chief Justice*, and FAHY and BURGER, *Circuit Judges*.

WILBUR K. MILLER, *Chief Judge*: At rates it established *ex parte*, and filed with the Federal Power Commission,

United Gas Pipe Line Company, a wholesaler, has for some years sold to Willmut Gas and Oil Company, a local distributor in Hattiesburg, Mississippi, all the natural gas required by the latter for resale. It does not appear that United has contracted with Willmut not to change the rates applicable to its purchases.

On September 30, 1955, United increased its tariffs under which Willmut was buying gas and, as required by Section 4(d) of the Natural Gas Act,[1] notified the Commission of the changes made. Acting under Section 4(e) of the Act,[2] the Commission suspended for five months the effectiveness of the increases[3] and ordered a hearing as to whether they were lawful. The hearing had not been completed at the end of the five-month period, so the increase was made effective, subject to a refunding bond.

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[1]Section 4(d) of the Act, 52 STAT. 822 (1938), 15 U. S. C. §717c(d), is as follows:

"Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published."

[2]Section 4(e) of the Act, 52 STAT. 822 (1938), 15 U. S. C. §717c(e), is in pertinent part as follows:

"Whenever any such new schedule is filed the Com-

mission shall have authority, either upon complaint of any State, municipality, or State commission, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect: *Provided,* That the Commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only; and after full hearing, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission . . . and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified . . ."

[3]Except industrial rates, which are not subject to suspension.

On May 15, 1956, United filed a second rate increase which the Commission suspended and set for hearing. The trial examiner on April 5, 1960, issued a decision as to the filings of September 30, 1955, and May 15, 1956, which the Commission adopted, with modification, on January 4, 1961.[4]

After the two filings above referred to, United filed four additional increases: on May 29, 1957, May 29, 1958, March 30, 1959, and February 11, 1960.[5] Each was suspended and set for hearing, and presumably each became effective five months after suspension, subject to undertakings for refunds. Before a hearing on the February 11, 1960, filing had been ordered, Willmut moved the Commission to reject it in order "to prevent the destruction of its jurisdiction to entertain" the pending proceedings involving earlier increases. Willmut also moved that, if the Commission accepted for filing the February 11, 1960, schedules, it deny the increases contained in the preceding filings then under investigation, and order United to refund all sums collected thereunder.

The order suspending and directing a hearing on the lawfulness of the latest increased rates was issued March 10, 1960. In a footnote to this order, the Commission noted that Willmut "has filed a petition to reject the instant proposed filing, or, in the alternative, to disallow pending undecided rate review proceedings," and noted further that United had filed an answer thereto. But the Commission did not expressly rule on Willmut's motions; inferentially it denied them by

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[4]The delay was caused by intervening litigation which culminated with the decision of the Supreme Court in *United Gas Pipe Line Co. v. Memphis Light, Gas and Water Division*, 358 U. S. 103 (1958).

[5]A still later increase, made December 15, 1960, is not involved here. That of February 11, 1960, will be referred to hereinafter as the latest.

accepting United's latest filing and failing to disallow and order refunded the previous increases involved in the undecided cases.

Its petition for rehearing having been denied by the Commission, Willmut petitioned for judicial review of the order of March 10, 1960, making these contentions:

(1) That the Commission had no authority under the Act to permit United to file or make effective increased rates superseding previously filed increased rates which were being investigated; that the Commission's duty was either to reject the filing of February 11, 1960, or to accept it and at the same time to disallow previously filed increases and order refunds with respect thereto;

(2) That the Commission abused its discretion in accepting for filing United's latest rate increases; that it should have exercised its power under Section 16 of the Act to order maintenance of the *status quo* during the entire period of investigation, which could have authorized rejection of the new schedules;

(3) That the Commission erred in not rejecting the latest filing on the ground it showed on its face that the increased rates fixed therein were unlawfully discriminatory and preferential.

There may be doubt as to whether Willmut, which did not become a party to the proceeding to investigate United's new rates until after its petition for review had been filed in this court, can obtain review of an order entered before its intervention; or whether it can be said that this order, which merely initiated the proceedings, can correctly be called "an order issued by the Commission in such proceeding" which will be judicially reviewed at the petition of a party aggrieved thereby; or whether Willmut was aggrieved by the order,

which in direct terms did no more than suspend and direct a hearing concerning the changed rates of which Willmut complains. *Cf.* Section 19(b) of the Natural Gas Act, 52 STAT. 831 (1938), 15 U. S. C. § 717r(b). But, as these questions were not suggested by the opposing parties — except that the aggrievement question was mentioned but not pressed — we resolve any such doubt in Willmut's favor, and proceed to consider the reasons it advances for reversal of the order of March 10, 1960.

Willmut's first point, that the Commission had no authority to permit United to file or make effective increased rates superseding previously filed increased rates which were then still under investigation, is not well taken. Under its rate-making and rate-changing power, which we shall show is not affected by the Natural Gas Act, United could change at will the rates offered to customers, since it had established them *ex parte* and not by contract. Moreover, Section 4(d) of the Act does not give the Commission discretion to reject schedules of increased rates tendered by a natural gas company; on the contrary, Section 4(d) requires that new schedules be filed with the Commission when notice of a rate change is given. The Commission's power with respect to a filed increase is found in Section 4(e): to initiate a hearing as to the lawfulness of the changed rates, to suspend their effectiveness for a time, and to order refunded that portion of the increase which, after hearing, it determines to be unlawful. Thus the Act provides for investigation of changed rates which have been filed; but it does not contemplate that the Commission may refuse to file a tendered new schedule showing changes in rates, or that it may summarily reject or disallow the new schedule without a hearing.

The petitioner argues that the filing of new rates, which supersede earlier increases already under investigation, destroys the Commission's jurisdiction to continue its inquiry into the lawfulness of the previous increases, because the

filing of superseding rates converts those which are superseded into past rates concerning which the Commission has no authority.

If this were true, a natural gas company whose newly-increased rates were being investigated by the Commission could render them immune from further scrutiny by the simple expedient of filing another increase. To avoid this result of its argument, which obviously it does not desire, Willmut contends that, if a new filing for increased rates is accepted, the Commission "must dismiss the pending proceedings [which are hearings concerning the lawfulness of previous increases] for lack of jurisdiction to entertain them, disallow the rates at issue therein, and order refund of all amounts collected by virtue of them."

Willmut thus suggests an incongruous procedure: that jurisdiction be disclaimed with reference to earlier increases, but that nevertheless it be exercised by disallowing the rates fixed in the previous filings, and ordering refunds. We find nothing in the Act or in the decisions which authorizes the Commission to disclaim further jurisdiction in a pending Section 4(e) hearing because another rate increase was filed during its pendency. And we are unwilling to hold, in the absence of controlling judicial precedent or express statutory provision requiring us to do so, that increased rates which are the subject of unfinished hearings under Section 4(e) must or may be summarily disallowed because the natural gas company files a schedule of new increases.

On the contrary, we hold that, when the commission orders suspension of and a hearing with respect to increased rates, its jurisdiction to investigate the lawfulness of the increase is not lost merely because the natural gas company later files for a still larger increase. In such circumstances, the Commission has authority to continue its investigation as to whether the rates previously filed were lawful for the period

from the date of filing until they were superseded by a later filing, and to order a refund of the amounts collected during that period which it thereafter determines to have been unlawful. From this it follows that the Commission did not err in permitting United to file and make effective the increases of February 11, 1960, even though that filing superseded earlier and smaller increases which were still under investigation.

We turn to consider the petitioner's second point: that the Commission abused its discretion in accepting for filing the increased rates tendered on February 11, 1960. On this point, Willmut's theory appears to be that the Commission erred in failing to issue orders under Section 16 of the Act which would "prevent Section 4 of the Act from being used as a vehicle for piling increase upon increase with such frequency and regularity as to foreclose any hope of either fixing lawful rates for the present and future or giving any rate stability." Had the Commission issued such preventive orders under Section 16, says Willmut, it would have been justified by them in rejecting United's latest filing.

In considering this contention, it is necessary to determine whether Section 16 of the Act authorizes the Commission to enter an order or adopt a rule or regulation which would permit it, in some circumstances, to refuse to receive for filing a new schedule showing changes in rates tendered by a natural gas company pursuant to the mandate of Section 4(d).

Section 16 of the Act speaks in broad and general terms: it provides, *inter alia,* that "The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this act." But the broad power granted by this statutory language does not authorize an order, rule or regulation which would nullify or restrict the right of a natural gas company to change the rates under which it offers to furnish service, subject only to the requirement of Section 4(d)

of the Act that it notify the Commission of the changes, so that it may proceed under Section 4(e). As the Supreme Court said in the *Mobile* opinion,[6] "The initial rate-making and rate-changing powers of natural gas companies remain undefined and unaffected by the Act." An order or regulation requiring the rejection of increased rates because earlier increases were still under investigation, which Willmut suggests, would deny to United the right to change rates at which it offers service, which the *Mobile* decision says is the right of a natural gas company. Thus, it seems clear that such an order or regulation would amount to a legislative change which is beyond the authority of the Commission.

Willmut's suggestion that United has used Section 4 of the Act "as a vehicle for piling increase upon increase" mistakes the nature and purpose of that section of the statute. The "vehicle" which United has used is one of its own inherent rate-making and rate-changing powers which the Supreme Court has said exists unaffected by the Natural Gas Act, and has described as the power "to establish *ex parte*, and change at will, the rates offered to prospective customers." The Supreme Court went on to say, ". . . [Section] 4(d) means simply that *no* change — neither a unilateral change to an *ex parte* rate nor an agreed-upon change to a contract — can be made by a natural gas company without the proper notice to the Commission."[7]

It may be that, under its power to change at will the rates which it established *ex parte* and offered to prospective customers, United has been "piling increase upon increase", with results which Willmut finds oppressive and thinks unreasonable and unlawful. But Section 4(d) does not forbid such successive filings; it merely requires that notice thereof

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[6]United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U. S. 332, 343 (1956).

[7]*Ibid.*

be given to the Commission so it may investigate their lawfulness. So, if "piling increase upon increase" is to be forbidden, legislation to that effect must be adopted.

We are not impressed by Willmut's argument on its third point, that the Commission erred in not rejecting the latest filing as being unlawfully discriminatory and preferential on its face. As we have seen, a natural gas company has the duty imposed by Section 4(d) to file with the Commission new schedules reflecting changes in rates. The Commission was not authorized to reject the filing in this case on any ground appearing on its face. Its only statutory authority was to enter upon a hearing concerning the lawfulness of such rates, to suspend their effectiveness for a time, and after full hearing to make such orders with reference thereto as would be proper in a proceeding under Section 5(a) of the Act.[8]

For the reasons given, we uphold the Commission's order.

Affirmed.

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[8]Section 5(a), 52 STAT. 823 (1938), 15 U. S. C. §717d(a), is as follows:

> "Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed

and in force, and shall fix the same by order: *Provided, however,* That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural-gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural-gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates."

APPENDIX C

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck, William R. Connole and Arthur Kline.

	Docket Nos.
Amerada Petroleum Corporation	G-19488, G-19577 and G-20390
Amerada Petroleum Corporation, *et al.*	G-19489 and G-20391
Amerada Petroleum Corporation (Operator), *et al.*	G-19490 and G-20392[1]

ORDER GRANTING REHEARING AND DISPOSING OF ISSUES THEREIN RAISED

(Issued April 5, 1960)

On August 31, 1959 and September 8, 1959, Amerada Petroleum Corporation (Amerada)[2] tendered for filing certain proposed changes in rates reflecting favored-nation increases, for jurisdictional sales of natural gas to El Paso Natural Gas Company. These proposed changes were designated and suspended by Commission order as follows:

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[1] This order does not provide for the consolidation for hearing or disposition of the several matters covered herein, nor should it be so construed.

[2] Amerada also refers, wherever used herein, to the Respondents designated as Amerada Petroleum Corporation, *et al.* and Amerada Petroleum Corporation (Operator), *et al.*

Docket No.	Rate Schedule No.	Supplement No.	Date Filed	Suspended to Date	Suspended Days
G-19488	1	21	8-31-59	9-25-59	5-1-60
G-19488	62	4	8-31-59	9-25-59	5-1-60
G-19488	69	1	8-31-59	9-25-59	5-1-60
G-19488	72	2	8-31-59	9-25-59	5-1-60
G-19489	27	5	8-31-59	9-25-59	5-1-60
G-19490	57	3	8-31-59	9-25-59	5-1-60
G-19577	51	6	9-8-59	10-7-59	5-9-60
G-19577	55	3	9-8-59	10-7-59	5-9-60
G-19577	56	8	9-8-59	10-7-59	5-9-60

Subsequently, on November 30, 1959, Amerada tendered for filing additional proposed changes in rates reflecting renegotiated increases involving the above-identified rate schedules. By letter orders dated February 5, 1960, the Commission informed Amerada that these proposed renegotiated increased rates had been considered as superseding the previously filed and suspended favored-nation increased rates. For this reason the Commission terminated as moot the suspension proceedings in Docket Nos. G-19488, G-19489, G-19490 and G-19577. The latter renegotiated proposed changes in rates, among others, were suspended until June 1, 1960 by Commission order issued December 18, 1959, in Docket Nos. G-20390, G-20391 and G-20392.

On March 7, 1960, Amerada filed in Docket Nos. G-19488, G-19489, G-19490 and G-19577, separate petitions for rehearing and reconsideration of the Commission's letter orders dated February 5, 1960. In support of its petitions, Amerada states that the effect of the Commission's order considering the November 30, 1959 filings as superseding the prior filings was to suspend the prior filings for eight rather

than five months contrary to the provisions of Section 4(e) of the Natural Gas Act. Amerada further states that the Commission's order denies it procedural due process of law, is confiscatory, is discriminatory and denies it the equal protection of the laws, and constitutes an illegal impairment of the obligations of contract.

With regard to suspension proceedings under the Natural Gas Act the Commission's general policy and interpretation has been that the rate in effect prior to the suspension period continues in effect and shall not be changed during the suspension period. Amerada's November 30, 1959 filings proposed to change rates under suspension and, therefore, were subject to rejection. Instead of rejecting them, the Commission considered them as superseding the prior filings since such action was considered to be less onerous on Amerada. However, in view of Amerada's opposition to this action and consistent with the Commission's General Policy and interpretation under the Natural Gas Act, it is deemed necessary for the proper enforcement of the Act to rescind the Commission's prior permission to file the November 30, 1959 changes in rates and reject them without prejudice to their resubmittal; vacate the letter orders dated February 5, 1960; reinstate the suspension proceedings in Docket Nos. G-19488, G-19489, G-19490 and G-19577; and reinstate the above-designated supplements tendered for filing on August 31, 1959, and September 8, 1959.

Since the Commission is rejecting Amerada's November 30, 1959 filings, so much of the suspension proceedings involving those filings should be terminated as moot.

The Commission finds:

(1) It is appropriate in carrying out the provisions of the Natural Gas Act to grant Amerada's petitions for rehearing; vacate the Commission's letter orders dated February 5, 1960 in Docket Nos. G-19488, G-19489, G-19490 and

G-19577 and reinstate the suspension proceedings therein; reinstate Supplements Nos. 21, 4, 1, 2, 3, 5, 6, 3 and 8 to Amerada's FPC Gas Rate Schedules Nos. 1, 62, 69, 72, 27, 57, 31, 55, and 56, respectively; rescind the Commission's permission to file the changes in rates tendered by Amerada on November 30, 1959 involving Amerada's FPC Gas Rate Schedule Nos. 1, 62, 69, 72, 27, 57, 31, 55 and 56; and reject the filing of said changes in rates without prejudice to their resubmittal.

(2) It is further appropriate in carrying out the provisions of the Natural Gas Act to terminate the proceedings in Docket Nos. G-20391, G-20392, and so much of the proceeding in Docket No. G-20390 as pertains to Supplements Nos. 22, 7, 5, 4, 9, 2 and 3 to Amerada's FPC Gas Rate Schedule Nos. 1, 31, 62, 55, 56, 69 and 72, respectively.

The Commission orders:

(A) Amerada's petitions for rehearing are granted; the Commission's letter orders dated February 5, 1960 in Docket Nos. G-19488, G-19489, G-19490 and G-19577 are vacated and the suspension proceedings therein are reinstated; and supplements Nos. 21, 4, 1, 2, 3, 5, 6, 3 and 8 to Amerada's FPC Gas Rate Schedules Nos. 1, 62, 69, 72, 27, 57, 31, 55 and 56, respectively, are reinstated.

(B) The Commission's permission to file the changes in rates tendered by Amerada on November 30, 1959 involving Amerada's FPC Gas Rate Schedules Nos. 1, 62, 69, 72, 27, 57, 31, 55 and 56 is rescinded and the filing of said changes in rates is rejected without prejudice to their resubmittal.

(C) The proceedings in Docket Nos. G-20391, G-20392, and so much of the proceeding in Docket No. G-20390 as pertains to Supplements Nos. 22, 7, 5, 4, 9, 2 and 3 to Am-

erada's FPC Gas Rate Schedules Nos. 1, 31, 62, 55, 56, 69 and 72, respectively, are terminated. By the Commission.

J. H. Gutride
Secretary

(Seal)

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck, William R. Connole and Arthur Kline.

	Docket Nos.
Amerada Petroleum Corporation	RI60-353
Amerada Petroleum Corporation (Operator), *et al.*	RI60-354

■ ■ ■

ORDER PROVIDING FOR HEARINGS ON AND SUSPENSION OF PROPOSED CHANGES IN RATES, AND ALLOWING INCREASED RATES TO BECOME EFFECTIVE SUBJECT TO REFUND.[1]

(Issued May 25, 1960)

The above-named Respondents have tendered for filing proposed changes in presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. In each filing, the natural gas is sold at 14.65 psia . . . The proposed changes are designated as follows:

[1] This order does not provide for the consolidation for hearing or disposition of the several matters covered herein, nor should it be so construed.

Docket Nos. R160-353

Docket No.	Respondent	Rate Sched. No.	Supp. No.	Purchaser and Producing Area	Notice of Change Dated	Date Tendered	Effective Date Unless Suspended	Date Suspended Until	¢ per Mcf: Rate in Effect	¢ per Mcf: Proposed Increased Rate	Rate in Effect Subject To Refund in Docket Nos.
R160-353	Amerada Petroleum Corp.	1	22	El Paso Natural Gas Co. (Eumont, Jalmat, etc., Flds., Lea Co., New Mexico)	4-22-60	4-25-60	6-1-60[2]	11-1-60	13.34802[3]	15.5	G-19488
R160-353	Amerada Petroleum Corp.	2	4	El Paso Natural Gas Co. (Bagley Fld., Lea Co., New Mexico)	4-22-60	4-25-60	6-1-60[2]	11-1-60	13.34802	15.5	G-19489
R160-353	Amerada Petroleum Corp.	31	[illegible]	El Paso Natural Gas Co. (Jalmat Fld., Lea Co., New Mexico)	4-22-60	4-25-60	6-1-60[2]	11-1-60	13.34802[4]	15.5	G-19577
R160-353	Amerada Petroleum Corp.	55	4	El Paso Natural Gas Co. (Eumont Fld., Lea Co., New Mexico)	4-22-60	4-25-60	6-1-60[2]	11-1-60	13.34802	15.5	G-19577
R160-353	Amerada Petroleum Corp.	56	9	El Paso Natural Gas Co. (Eumont Fld., Lea Co., New Mexico)	4-22-60	4-25-60	6-1-60[2]	11-1-60	13.34802	15.5	G-19577
R160-353	Amerada Petroleum Corp.	62	5	El Paso Natural Gas Co. (Bagley Fld., Lea Co., New Mexico)	4-22-60	4-25-60	6-1-60[2]	11-1-60	13.34802	15.5	G-19488
R160-353	Amerada Petroleum Corp.	69	2	El Paso Natural Gas Co. (Bagley Fld., Lea Co., New Mexico)	4-22-60	4-25-60	6-1-60[2]	11-1-60	13.34802	15.5	G-19488
R160-353	Amerada Petroleum Corp.	72	3	El Paso Natural Gas Co. (Bagley Fld., Lea Co., New Mexico)	4-22-60	4-25-60	6-1-60[2]	11-1-60	13.34802	15.5	G-19488
R160-354	Amerada Petroleum Corp. (Operator), *et al.*	57	6	El Paso Natural Gas Co. (Jalmat Fld., Lea Co., New Mexico)	4-22-60	4-25-60	6-1-60[2]	11-1-60	13.34802[3]	15.5	G-19490

[2] The stated effective date is the effective date proposed by Amerada.
[3] Includes 0.4467¢ per Mcf for compression, for some leases, deducted by Buyer.
[4] Includes 0.4467¢ per Mcf for compression deducted by Buyer.

* * *

In support of its proposed favored-nation rate increases, Amerada Petroleum Corporation (Amerada) states that the amendatory agreements were negotiated at arm's length and that as consideration for the price increases Amerada agreed to give up the favored-nation clauses of the contracts.

* * *

The proposed changes may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

(1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the several proposed changes and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

* * *

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4 and 15 thereof, the Commission's Rules of Practice and Procedure and the Regulations under the Natural Gas Act [18 CFR, Chapter I], public hearings shall be held upon dates to be fixed by notices from the Secretary concerning the lawfulness of the several proposed increased rates and charges contained in the above-designated supplements.

(B) Pending hearings and decisions thereon, each of the above-designated supplements is hereby suspended and the use thereof deferred until the date indicated in the above "Rate Suspended Until" column, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

* * *

(E) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C. in accordance with the Rules of Practice and Procedure [18 CFR 1.8 and 1.37 (f)] on or before July 8, 1960.

By the Commission.

Joseph H. Gutride,
Secretary.

(Seal)

* * *

APPENDIX D

Section 4 of the Natural Gas Act (15 U. S. C. 717c) provides, in pertinent part, as follows:

"(c) Under such rules and regulations as the Commission may prescribe, every natural gas company shall file with the Commission, within such time . . . and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

"(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

"(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, or State commission,

or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect: *Provided*, That the Commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of

proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible."

Section 16 of the Natural Gas Act (15 U. S. C. 717o.) provides, in pertinent part, as follows:

"The Commission shall have power to perform any and all acts and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this chapter; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours."

The Regulations of the Federal Power Commission (18 C.F.R. 1.1 *et seq.*) provide, in pertinent part, as follows

"Sec. 2.4. Suspension of rate schedules. The Com-

mission approved and adopted on May 29, 1945, the following conclusions as to its powers of suspension of rate schedules under Section 205 of the [Federal Power] Act:

■ ■ ■

(f) During suspension, the prior existing rate schedule continues in effect and should not be changed during suspension.

■ ■ ■

"Sec. 2.52. Suspension of rate schedules. The Commission, in approving and adopting the interpretation stated in Sec. 2.4, applied it also to the suspension of rate schedules under Section 4 of the Natural Gas Act."